

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000467

02/21/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

WILLIAM B BURKE

v.

ROBERT CHARLES GOODMAN

NEAL W BASSETT

MESA CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #799367

Charge: 1. DUI-IMPAIRED TO SLIGHTEST DEGREE
2. EXTREME DUI

DOB: 11/22/64

DOC: 01/23/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement and this Court has considered and reviewed the record of the proceedings before the Mesa City Court, the exhibits made of record and the Memoranda submitted by counsel.

The only issue raised by the Appellant is whether the trial judge erred in denying Appellant's Motion to Dismiss, or Suppress the Blood Test Results. After oral argument the trial

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judge denied this motion. Thereafter, counsel submitted this case to the court, waiving their rights to a jury trial, on stipulated evidence. Appellant was found guilty.

Appellant's Motion to Dismiss, or Alternatively to Suppress the Results of the Blood Test was based upon several uncontested acts. The Mesa Police Department contracts with a business entitled "Emergency Services Unlimited" (ESU) to provide phlebotomists who will drive to a police station and draw blood from drunk drivers arrested by the police. ESU utilizes a form resume for its employees to use. The top portion of this resume details each phlebotomist's training and credentials. At the bottom of the form is a sentence which forms the basis for Appellant's motion and appeal. That sentence states:

I have completed no additional reports nor have any independent recollection of the circumstances of this particular case or suspect, unless a notation ("see witness statement") was made above my signature on the department's DUI form.

Appellant argues, as he did in the lower court, that this sentence utilized by ESU is coercive in that it forces its employees (specifically the phlebotomist) to remember nothing from their encounters with an accused drunk driver. Appellant contends his rights under the due process guarantees of Article II, Section 4 of the Arizona Constitution and the Fifth and Fourteenth Amendments to the United States Constitution are violated. Appellant also contends that his rights of compulsory process and confrontation guaranteed in Article II, Section 24 of the Arizona Constitution, and the Sixth Amendment to the United States Constitution are violated. However, Appellant does not explain how these rights are violated by the sentence quoted from the ESU phlebotomists resume form.

The trial judge correctly concluded that the ESU form was not coercive, in the absence of any specific evidence that a specific individual had been coerced by that language utilized on the form. Clearly, an individual phlebotomist is perfectly free to make notations of recollections of specific cases or suspects in a form entitled "Witness Statement" or upon the phlebotomist resume form itself. More importantly, nothing in the language used in the ESU form precludes investigators for either party from contacting the phlebotomist and challenging and verifying whether the individual phlebotomist does have an independent recollection of the circumstances of a particular case or suspect.

This Court finds that ESU form utilized by phlebotomists employed by the Mesa Police Department was not coercive, and did not interfere or violate Appellant's state or federal constitutional rights. The trial judge did not err in denying Appellant's Motion to Dismiss/Suppress.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Mesa City Court in this case.

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IT IS FUTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.